BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

PATRICIA ANN PERICOLA	)	
Claimant	)	
VS.	)	
	)	Docket No. 216,638
AMERICAN RED CROSS	)	
Respondent	)	
AND	)	
	)	
NATIONAL UNION FIRE INSURANCE	)	
COMPANY NEW YORK	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appeal from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on January 2, 1997.

ISSUES

Respondent contends the Administrative Law Judge erred in finding claimant's injury arose out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record and considered the briefs of the parties, the Appeals Board finds that the preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

Claimant was injured on July 22, 1996, in Emporia, Kansas. She was entering a van owned by respondent. The driver put the van in reverse before claimant was seated, causing her to fall and injure her back.

Claimant was sent to Emporia by her employer, along with several other employees of respondent to conduct a blood drive. On the date of accident, claimant departed Wichita, her principal place of employment, and rode to Emporia with several coworkers in the van. Upon their arrival in Emporia, they set up a blood drive site and spent the rest of the day performing their normal work duties. At approximately 9 p.m. the blood donor site was closed. Claimant and her coworkers left the blood donor site and proceeded to the hotel where they were staying that night.

Respondent reimbursed claimant for expenses of meals and lodging. They were to work two days in Emporia and then travel to other towns before returning to Wichita on or about July 26, 1996. Claimant testified that her wages were based upon her hours worked at the blood donor site and her travel time.

At the time of the injury, claimant was joining her coworkers to go to a restaurant in the van because there were none in the vicinity of the motel. The van was being driven by the nurse in charge and there were only employees of respondent in the van at the time of claimant's accident.

Respondent contends it is not liable to pay compensation to claimant because her accident did not arise out of and in the course of her employment with respondent. According to respondent, claimant's injury is excluded from coverage under the Act because it was suffered "while engaged in recreational or social events under circumstances where the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer." K.S.A. 1996 Supp. 44-508(f).

Respondent points out that claimant's work day had ended and that claimant was not required to eat with her coworkers. As there was no duty to attend the evening meal with coworkers, the circumstances under which claimant was injured constituted a recreational or social event.

Claimant, on the other hand, argues that claimant's accidental injury falls within the "special hazard exception" to the "going and coming rule", citing Chapman v. Beech Aircraft Corp., 258 Kan. 653, 907 P.2d 828 (1995). The argument submits that claimant was on the only available route to or from work because the van was the only transportation available and its route at the time of the accident was being determined by the employer, whose supervisor was driving. The route involved a special risk or hazard because it involved transportation in the employer's van. The only means of transportation available was the van. Finally, it is argued that the "route", (read "van") was not used by the public because the van was not made available to the general public. Thus, according to claimant, all three conditions set forth in Chapman are met.

The Appeals Board finds that the circumstances of claimant's injury in this case do not fall within the "special hazard exception", to the "going and coming rule." Nevertheless,

claimant's injury is compensable as resulting from an accident which arose out of and in the course of her employment because the "going and coming rule" is not applicable to employment where travel is a necessary and integral part of employment. *See* Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973); Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984).

The Administrative Law Judge found that claimant's injury "arose out of the nature, conditions, obligations, and incidents of the employment." The Appeals Board agrees. Claimant was a traveling employee at the time of her accident and the injury she sustained arose out of a risk which was reasonably incidental to the circumstances of her employment. She had traveled by company van with other employees from Wichita to Emporia, Kansas. The employer provided for the cost of meals and overnight lodging. Obviously, the employer anticipated such expenses would be incurred and considered them to be incidental to the performance of the required job duties. At the time of her injury, claimant was traveling from her place of overnight accommodations to take a meal with her fellow employees. Where employment requires travel from place to place in the discharge of the employee's duties, an injury which occurred while traveling is an exception to the "going and coming rule." Schmidt v. Jensen Motors, Inc., 208 Kan. 182, 490 P.2d 383 (1971); Kennedy v. Hull & Dillon Packing Co., 130 Kan. 191, 285 Pac. 536 (1930). In Blair v. Shaw, 171 Kan. 524, 233 P.2d 731 (1951), the Court held that when a business trip is an integral part of the claimant's employment the "entire undertaking is to be considered from a unitary standpoint rather than devisable." *See also*, IA Larson, The Law of Workmen's Compensation, Sec. 25.21(a) at 5-281(1996) which states:

> "As to (1), traveling employees, whether or not on call, usually do receive protection when the injury has its origin in a risk created by the necessity of sleeping and eating away from home. The hotel-fire cases are the best illustration of this. Closely related are the injuries sustained in the process of getting meals. So when a traveling man slips in the street or is struck by an automobile between his hotel and a restaurant the injury has been held compensable . . . ."

Applying the principles announced in the above-referenced cases, the Appeals Board concludes that travel was an integral part of claimant's employment and that her injury which occurred while in route to the evening meal was, therefore, an injury which arose out of and in the course of her employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the January 2, 1997, preliminary hearing Order by Administrative Law Judge Nelsonna Potts Barnes should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Gregory G. Lower, Wichita, KS
Kurt W. Ratzlaff, Wichita, KS
Nelsonna Potts Barnes Administrative Law Judge
Philip S. Harness, Director